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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,127

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EXAMINER

PEPITONE, MICHAEL F

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

09/30/2009

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CAIGUO GONG, ANTHONY JAY DIAS, ANDY HAISHUNG TSOU,
BEVERLY JEAN POOLE and KRISS RANDALL KARP

Application 10/518,127
Technology Center 1700

Mailed: September 29, 2009

Before DEBORAH L. PERRY, *Supervisory Paralegal Specialist Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A review of the file reveals that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed June 4, 2009, under the heading "Grounds of rejection to be Reviewed on Appeal" is either unclear or is not consistent with the grounds of rejection of claims set forth in the last Office action of record. The grounds of rejection to be reviewed on appeal as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Furthermore, the examiner must provide a clear statement of whether examiner agrees or disagrees with the statement of grounds of rejection to be reviewed as set forth in the brief and an explanation of any disagreement. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner's Answer, under the heading GROUND OF REJECTION omits Claims 1-3 5, 9-11 14, 16, 19, 20, 22-23, 29-32, 36-38, 40, 42, 45 and 73-74 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-6 8, 10-11, 13, 16, 19-20, 22-23, 29-30, 32, 24-37, 39, 42, 45 of copending Application No. 10/518,193; whereas the Final Rejection, mailed September 15, 2008, included the double patent rejection of Claims 1-3 5, 9-11 14, 16, 19, 20, 22-23, 29-32, 36-38, 40, 42, 45 and 73-74. Also, the

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Advisory Action dated November 25, 2008, pg. 4 states “The nonstatutory obviousness-type double patenting of claims 1-3, 5-6 8, 10-11, 13, 16, 19-20, 22-23, 29-30, 32, 24-37, 39, 42, 45 of copending Application No. 10/518,193 is maintained. The examiner must provide clarification as to the disposition of claims 1-3, 5-6 8, 10-11, 13, 16, 19-20, 22-23, 29-30, 32, 24-37, 39, 42, 45.

Clarification of the record is required for all Grounds of rejection to be reviewed on appeal for all claims.

CONCLUSION

Accordingly,
it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner’s Answer mailed June 4, 2009;
 - 2) to issue a PTOL-90 clarifying the status of double patenting rejection of Claims 1-3, 5-6 8, 10-11, 13, 16, 19-20, 22-23, 29-30, 32, 24-37, 39, 42, 45
- OR
- 3) to issue a new Examiner’s Answer setting forth the correct Grounds of rejection and to correct other sections of the Answer as may be required;
 - 4) to include the approval of the TC Director or his/her designee (as required for any new grounds of rejection); and,
 - 5) such further action as may be required.

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If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DP/dw

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